IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.5795 OF 1998

Smt.Sharmila Sharad Mali
and Ors. .. Petitioners

Versus

State of Maharashtra
and Ors. .. Respondents.

Ms.Neeta Karnik for petitioners
Mr.V.A.Thorat, Advocate General with
C.R.Sonawane, A.G.P. for respondents.

CORAM : A.P.SHAH AND
S.C.DHARMADHIKARI, JJ.
DATE : 21st FEBRUARY 2005.

ORAL JUDGEMENT (Per Dharmadhikari, J)

. This petition under Article 226 of the Constitution of India challenges Notifications dated 17th September 1998 constituting and

establishing Palghar Municipal Council. It is prayed that this Court should declare that Proclamation dated 14th June 1993 (Exh.A) is rendered ineffective and inoperative and no action can be taken in pursuance thereof. Alternatively, it is prayed that this Court should issue a writ of mandamus or other appropriate writ, order or direction to delete areas of Revenue Villages Aliyali, Tembhode, Lokmanya Nagar, Vevoor and Gholveera earlier declared as scheduled areas. In substance, the request is that these areas should be deleted from Palghar Municipal Council limits.

2. Petitioners are residents and members of Gram Panchayat of one of the villages referred to above. Respondents are authorities under Maharashtra Municipal Council's Nagar Panchayat and Industrial Township Act (for short Municipalities Act) and Bombay Villege Panchayat Act (for short Panchayat Act).

3. It is contended by petitioners that Palghar is situate in Thane district on western line. It is contended that by pressure of

urbanisation in Vasai, Virar areas, Palghar is also affected. After setting out salient features of Palghar and adjoining Talukas, it is contended that in 1989, Government of Maharashtra was contemplating formation of Palghar Municipal Council consisting of eight revenue villages enlisted above. There are six gram panchayats for the said villages. The Collector was asked to submit his report. When the villege panchayat learnt about this fact, a resolution was passed opposing formation of this council and in any event inclusion of these villages therein. It appears that a meeting was held in the chamber of the then Urban Development Minister with elected representatives of this panchayat and the Minister categorically assured that villages will not be compelled to join the proposed Council. It appears that considering the position of these villages, the then Government dropped proposal of formation of this Council.

4. In 1992, Constitution of India was substantially amended by introduction of Parts IX and IX-A therein. These amendments are popularly known as Introduction of "Panchayati Raj System".

On 14th June 1993, first respondent issued proclamation declaring its intention to form Palghar Municipal Council consisting of villege panchayats of Palghar and others in Thane District. Government vide the said notification invited objections from the concerned and affected persons. It is contended that this notification was in fact circulated to the village Panchayats only in the month of July 1993 and that too without necessary map.

5. After the concerned village panchayats learnt of this proclamation, meetings were convened wherein the problems were discussed in details and at the conclusion of the same resolution opposing inclusion of the said villages in the proposed Council came to be passed. One such resolution is annexed as Exh.D. We are informed that similar resolution was passed by Gram panchayat of villege Temburde. Sometime in July and October 1993, representations were made strongly opposing inclusion of the villages in the proposed municipal council.

6. Our attention is also invited to amendments to Panchayat Act vide Maharashtra Act No.21 of 1994. It is contended that by amendments consultation is made mandatory by the State whenever a village is to be excluded from a local area. Consultation is with standing committee and the panchayat concerned. It is contended that no such consultation is undertaken with the village panchayats in the present case. Thereafter, our attention has been invited to the amendments to the Municipalities Act incorporated vide Maharashtra Act No.41 of 1994, by which sections 3 to 6 have been substantially amended. After inviting our attention to the amended provisions, it is contended that Z.P. standing committee rejected the proposal of Government for inclusion of villages. It is also pointed out that after the constitutional amendments as well as the amendments to the above mentioned statutes, a fresh proclamation ought to have been issued and, therefore, standing committee approval for formation of municipal council is not of any relevance.

7. Our attention is also invited to the

amended Act of 1997 amending Village Panchayat Act by insertion of section 8A conferring wide powers and duties on the Gram sabha in the scheduled area.

8. It is next contended that ignoring the aforesaid statutory provisions and their mandate, respondent No.1 issued impugned notification on 17th September 1998 constituting Palghar municipal council and including therein eight different revenue villages. Notifications consequential thereto have also been issued including the one declaring that these villages would cease to be governed by Panchayat Act. However, it is contended that petitioners could not immediately object to the notifications because of unprecedented rain and flooding. Petitioners were busy organising flood relief work in September and October 1998. It is contended that Sarpanch of one of the villages led a morcha to the Tahsildar’s office and handed over written representation strongly opposing inclusion of villages in Palghar Municipal Council. There was protest from other villages as well.

9. The impugned notification was published in the official gazette some time in October 1998. It is contended that the then Chief Minister visited Palghar in November 1998 and assured in a meeting that octroi would not be levied or collected for a period of six months.

10. This petition was filed thereafter and on 24th December 1998, this Court admitted the petition but declined Interim reliefs. It was observed that all actions would be subject to the outcome of this petition.

11. Ms.Karnik, learned Counsel appearing for petitioners contended that the proclamation dated 14th June 1993 is rendered ineffective by virtue of subsequent amendments to the Municipalities and Panchayat Act. In any event, its survival on the touchstone of 73rd Constitutional Amendment needs to be considered and in her submission the proclamation is invalid and ineffective. She submits that once the proclamation itself is vitiated then, further proceedings including impugned notification based thereupon would not

survive and should be quashed and set aside. That apart, she submits that the entire exercise is vitiated by non compliance with the constitutional provisions as well as the statutory mandate. She submits that it was obligatory on the part of the respondent No.1 to have considered as to whether the factors enumerated in Article 243(Q)(2) of the Constitution of India are satisfied in the facts and circumstances of the present case. Unless that satisfaction is recorded, it is not permissible to issue any proclamation nor is it permissible to issue the final notification. She submits that the criteria laid down in the amended Municipalities Act has also not been considered inasmuch as there is no mention at all of the same in the impugned proclamation as well as the notification.

12. She also contends that there has been no consultation much less any meaningful and effective one with the gram panchayat prior to the villages being included in the Palghar Municipal Council. She submits that for any effective, purposeful as well as meaningful

conssultation, it is necessary that relevant data and details are furnished to the authorities which have to be consulted. Unless and until, the data pertaining to the density of population, revenue generated for local administration and percentage of employment in non agricultural activities of concerned villages is furnished to these authorities, consultation cannot be said to be effective at all. Such ineffective and meaningless consultation defeats the very object and purpose of statutory provisions enacted in that behalf. It deprives the concerned residents and villagers an opportunity to object to the mode of governance of their areas. Ultimately, for a democracy to work and succeed, it is necessary that peoples' participation and representation is complete. If residents and villagers do not desire to become part of a larger area and to be governed by a Council then, there wishes ought to be considered and that is the purpose and object of such provisions. Therefore, the impugned notification deserves to be quashed and set aside on this ground alone. That apart, she assails the notification in question also on the ground that section 4 of the

Villege Panchayat Act has not been complied with.

13. In support of the aforesaid contentions, apart from the relevant statutory provisions, Ms.Karnik heavily relied upon a Division bench decision of this Court in the case of Deep Narayan Chavan & Ors. Vs. State of Maharashtra reported in 2003(4) ALL.M.R. 922. In her submission, the law laid down in this decision is squarely applicable to the facts and circumstances of the present case. She submits that decision of the Supreme Court in the case of The State of Maharashtra Vs. Jalgaon Municipal Council and Ors. reported in A.I.R. 2003 S.C. 1659 is apposite and applies with full force to this case. She also invites our attention to a decision of a Division Bench of this Court to which one of us (A.P.Shah, J) was a party. That decision is reported in 2000 Supp. B.C.R. 337. Additionally, she relies upon Division Bench decisions reported in 1990(3) B.C.R. 14 and 2004 (4) M.L.J. 209. The last two decisions are on the issue of consultation.

14. On the other hand, learned Advocate

General appearing for the first respondent invites our attention to the relevant statutory provisions as also the affidavits placed on record. He submits that in the affidavits placed on record, pursuant to directions of this Court, material which was before the State Government while forming municipal council has been referred to. He submits that there is no substance in any of the contentions and objections raised on behalf of the petitioners. He submits that the entire exercise is in conformity with the constitutional mandate as well as statutory provisions. He submits that from a perusal of the note as well as minutes which have been circulated pursuant to the directions of this Court, it becomes crystal clear that the statutory mandate has been duly complied with. He submits that it is too late in the day to complain that there has been no consultation much less effective and meaningful one with the authorities specified in the relevant statutory provisions. On the other hand, it is his submission that there has been a meaningful and effective consultation with the authorities and the entire data as well as details were placed at

their disposal for them to forward their opinion. Therefore, the complaint is devoid of any merit and deserves to be rejected. He submits that more than six years have passed after the impugned notification has been issued and the areas have been brought within Palghar Municipal Council. The said villages are now part of municipal council and no longer governed by the Panchayat Act. Therefore, this court should not set the clock back and interfere with the impugned notification at this belated stage. That would upset governance and administration. Consequently, writ petition deserves to be dismissed.

15. Mr.Sonawane, learned A.G.P. also supplemented the aforesaid contentions and invited our attention to the affidavit on record and notes in the relevant file. Copies of the minutes of the meeting held from time to time were handed over to Ms.Karnik for her perusal.

16. With the assistance of the learned Counsel appearing for both sides, we have gone through the constitutional and statutory

provisions as well as the case law in the field. We are of the view that the petitioners have failed to make out a case for interference by us under Article 226 of the Constitution of India with the impugned notifications. Our reasons for this conclusion are set out hereinbelow.

17. Government of Maharashtra was of the view that revenue villege of Palghar and surrounding areas under the jurisdiction of panchayat in Thane district are developing very fast. Government of Maharashtra termed this area as local area. It was of the view that population of this local area is not less than 25,000 and it is expedient to declare the said local area as municipal area. After arriving at this opinion in pursuance of the provisions of sub-section 3 of section 3 of the Municipalities Act, the Government announced its intention to issue a notification under sub-section 1 thereof and declare the local area more particularly described in schedule A to the preliminary notification dated 14th June 1993 to be Palghar municipal area. Objections were, therefore, invited to the proposal and it was further

directed that the same be forwarded to the Collector, Thane within two months from the date of proclamation in the official gazette. It is pointed out to us that objections received by Additional Collector, Jawhar (Dist.Thane) were forwarded with the comments of the said authority thereon vide communication dated 24th February 1994 to the department of Urban Development of Government of Maharashtra. These objections were to the effect that Palghar being a bigger gram panchayat, a municipal council independently thereof be constituted and other gram panchayats may not be included in the same. Secondly, there are many small scale industries within the local area and if a municipal council is established, these industries will have to bear heavy burden of entry tax and octroi and this will adversely affect them. Thirdly, major chunk of land in this area is in possession of small land holders and farmers and upon inclusion thereof in the municipal council all concessions available to such farmers and landholders would be taken away. Fourthly, all agricultural operations would come to an end. Similarly, upon constitution of municipal council, new taxes would be levied. On

these objections, the concerned authorities forwarded their opinion and ultimately a decision was reached that the objections are general in nature and there is no substance in any of them.

18. With the assistance of Counsel appearing for both sides, we have perused the file notes and it is clear that about first objection it is recorded that it will not be feasible to have Palghar municipal council consisting of the areas within the jurisdiction of Palghar village panchayat only. It is observed that areas adjacent to Palghar have also been developing rapidly and, therefore, it will be advisable to form one municipal council. The criteria of minimum figure of population viz., 25,000 and 35% non agricultural income are fully satisfied in this case. Similarly, the grievances that small scale industries would be adversely affected is without any substance inasmuch as the moment municipal council is established and taxes such as octroi duty are levied, simultaneously, it will be open for such entities to apply for concessions and exemptions available under the relevant octroi schedule and rules. Such

requests are bound to be considered and, therefore, the apprehension that the small scale industries may not survive is baseless. The apprehension that welfare schemes availale to small and marginal farmers would not be available has also been taken care of by the authorities inasmuch as they have assured that schemes such as "Nehru Rojgar Yojana" and schemes for making available basic urban amenities to persons below poverty line would be implemented even in urban areas. Therefore, the basis that once Municipal council is established, poorer section of the society will suffer adversely is not sound. Last but not the least, the apprehension that higher taxes will be levied and liabilities would increase can be taken care of by resorting to amended provisions whereunder areas freshly included or areas forming part of village panchayat now getting converted into municipal council would have benefit of consolidated property tax at the rate prevailing in the gram panchayat area and periodical increase of 20% every year. In other words, the power to levy tax under the Municipalities Act in respect of areas within municipal limits would be exercised

in a phased manner and care is being taken by not imposing a heavy burden or liability of taxes. Hence this apprehension is also not well founded.

19. In our view, the aforesaid material would indicate that due consideration was given to objections of village panchayats and affected persons. It is not as if there has been no consideration of the objections at all. Ultimately, the nature of power that is conferred on the Government while establishing and constituting a municipal council has to be borne in mind. This Court in exercise of its writ jurisdiction cannot question the wisdom of establishing a municipal council or including or excluding any areas therefrom. Ultimately, these are decisions which are taken for the purposes of facilitating administration and governance. The nature of the power conferred on the authorities in this regard is such that this Court cannot substitute its views with those of people in charge of administration and governance. Moreso, when the petitioners cannot question the decision on the ground that better alternative is available. Therefore, we cannot uphold the

submission that municipal council of village Palghar alone should have been constituted and the other villages ought not to be forming part thereof.

20. Equally untenable is the contention on the aspect of consultation. The word "Consultation" has been subject matter of interpretation in several decisions of Supreme Court and also in the context of statutes like Municipalities Act. The term will have to be interpreted consistent with the object and purpose of enacting such statutes. It is not as if complete concurrence and uniformity of views is what is contemplated in this process. The process means taking into consideration views and opinion of authorities and bodies which are going to be affected by a decision of the present nature. If such authorities were forwarded the relevant materials and opportunity is afforded to place their views and objections then, in our view, the process is complete. Ultimately whether the process of consultation was substantially followed or not must depend on the facts and circumstances of each case.

21. In the present case, in the affidavit of Deputy Secretary, Urban Development Department it has been pointed out that the contention of petitioners is that on account of formation of municipal council status of villege under the Panchayat Act ceases and, therefore, it is necessary to consult the Panchayat. It is pointed out that elected bodies were effectively consulted. It has been duly noted that gram panchayat of concerned villages have passed resolutions opposing formation of municipal council. All these resolutions were considered by standing committee of the Z.P. in its meeting dated 8th August 1997. The said standing committee vide resolution No.46 recommended to Government to establish a municipal council at Palghar consisting of all villages. In the Government notification dated 17th September 1998 issued by Deputy Secretary, Urban Development Department, it is specifically mentioned that in exercise of powers conferred by section 4(2)(b) of Panchayat Act read with clause (g) of Article 243 of Constitution of India and all other powers in that behalf and after consulting with the

Standing Committee of the Thane Z.P. as well as villege panchayat of concerned villages, the declaration that such villages should cease to be revenue villages has been issued. From the records, it is clear that before this process was completed, the authorities which are required to be consulted were appraised of the relevant materials including the maps and connected documents. An authority was designated (C.E.O. Z.P. Thane) by the State Government for the purpose of forwarding all opinions and objections. It appears that initially the standing committee forwarded its opinion in which it incorporated specifically the objections of gram panchayat of concerned villages. It also noted the objections of some of the villege panchayats about non availability of maps. It also forwarded the opinion and objections of such panchayats that they are unable to forward their opinions in the absence of a final map. Even this objection was duly noted and it appears that the objection about non availability of maps was attended and the same were made available. It is only thereafter that the standing committee passed its resolution. Therefore, there is no

substance in the contention that there has been no effective or meaningful consultation. In our view, the procedure as contemplated by law has been substantially followed.

22. The other contention raised on the basis of amendments to the Constitution is equally without substance. The contention proceeds on an erroneous assumption that the State Legislature has not firstly amended the enactments in question in the light of the Constitutional amendments and secondly, in any event, the proclamation and the final notification is not in accordance therewith. Section 3 of the Municipalities Act prior to its amendment reads as under:-

> "3.(1) After making such inquiry as it deems fit, the State Government may declare, by notification in the Official Gazette, any local area of which the population is not less than 15,000 to be a municipal area;
>
> (2) Every notification issued under

sub-section (1) shall define the limits of the municipal area to which it relates and such area shall be called "the ..... Municipal area".

(3) Before the publication of a notification under sub-section (1), the State Government shall cause to be published in the Official Gazette, and also in at least one newspaper circulating in the area to be specified in the notification, a proclamation announcing the intention of Government to issue such notification, and inviting all persons who entertain any objection to the said proposal to submit the same in writing with the reasons therefor, to the Collector of the District within two months from the date of the publication of the proclamation in the Official Gazette;

Copies of the proclamation in Marathi shall also be posted in conspicuous places in the area proposed to be

declared as a municipal area;

(4) The Collector shall, with all reasonable despatch, forward any objection so submitted to the State Government.

(5) No such notification as aforesaid shall be issued by the State Government unless the objections, if any, so submitted are in its opinion insufficient or invalid."

Subsequently, the said enactment came to be amended and the amended section 3 falling in Chapter II reads thus:-

"3. Specification of areas as smaller urban areas:-

(1) A Council for every municipal area existing on the date of coming into force of the Maharashtra Municipal Corporations and Municipal Councils (Amendment) Act, 1994 (Maharashtra XLI of

1994), specified as a smaller urban area in a notification issued under clause (2) of Article 243-Q of the Constitution of India in respect thereof, shall be deemed to be a duly constituted Municipal Council known by the name ..... Municipal Council.

(2) Save as provided in sub-section (1), the State Government may, having regard to the factors mentioned in clause (2) of Article 243-Q of the Constitution of India, specify, by notification in the Official Gazette, any local area as a smaller urban area;

Provided that, no such area shall be so specified as a smaller urban area unless the State Government, after making such inquiry as it may deem fit, is satisfied that;

(a) the population of such area is not less than 25,000; and

(b) the per centage of employment in non-agricultural activities in such area is not less than thirty five per cent.

(2-A) For every smaller urban area so specified by the State Government under sub-section (2), there shall be constituted a Municipal Council known by the name ..... Municipal Council.

(3) Before the publication of a notification under sub-section (2), the State Government shall cause to be published in the Official Gazette, and also in at least one newspaper circulating in the area to be specified in the notification, a proclamation announcing the intention of Government to issue such notification, and inviting all persons who entertain any objection to the said proposal to submit the same in writing with the reasons therefor, to the Collector of the Districts within two

> months from the date of the publication of the proclamation in the Official Gazette.
>
> Copies of the proclamation in Marathi shall also be posted in conspicuous places in the area proposed to be declared as a municipal area.
>
> (4) The Collector shall, with all reasonable despatch, forward any objection so submitted to the State Government.
>
> (5) No such notification as aforesaid shall be issued by the State Government unless the objections, if any, so submitted are in its opinion insufficient or invalid.

It is contended on behalf of the State that after the constitutional amendment the issue has been examined and amendments have been carried out in the light of the 74th amendment to the Constitution of India, in Maharashtra

Municipalities Act. Our attention was invited to Exh.1 annexed to the affidavit dated 1st November 2004 filed on behalf of the State. This exhibit is nothing but Maharashtra Act No.XLV of 1994. The enactment in question was brought on par with the constitutional amendment. The contention that on the date of the proclamation on 14th June 1993, the State Government did not amend the aforesaid enactment in the light of the constitutional amendment is devoid of substance, inasmuch as, the proclamation was issued to invite objections to the proposal of formation of Palghar Municipal Council. Before the date of the final notification, the enactment having been amended and brought in tune with the constitutional scheme and the ultimate action being in conformity therewith, this contention lacks merit and is devoid of any substance. We have no hesitation in rejecting the same. The amended provisions do not make any significant departure in so far as the requirement of issuing a preliminary notification. Therefore, the preliminary notification before us is not vitiated. The factors enumerated in the Amended provisions have to be taken into account before

issuance of final notification.

23. As far as the amendment to the Municipalities Act in 1994, what we find from the record is that the statute having referred to the constitutional provisions and the criteria prescribed therein, the final notification is issued by the Government after it was satisfied about the population and percentage of non-agricultural employment. We have adverted to the factors of population and percentage of employment in non agricultural activities. We need not repeat the reasons which have persuaded us to reject the contention on this aspect of the matter.

24. From the materials placed on record, it is clear that the criteria set out in Article 243-Q which in turn is referred to in the amended provisions of the Maharashtra Municipalities Act is fully satisfied. The action of the State Government in issuing the final notification is not vitiated in any manner. The notification cannot be struck down as bad in law.

25. Now what remains for consideration is the amendment to the Panchayat Act. In our view, it is only in the light of the amended provisions that consultation with the standing committee and the panchayat concerned was undertaken by the Government. If it not were to be so, then there was no need to consult these authorities. It is only in the light of the constitutional provisions and the amendments in pursuance thereof that the exercise and process of consultation with the standing committee and the concerned panchayat was undertaken. That exercise cannot be faulted is already observed by us. Therefore, this contention must also fail.

26. In the light of the aforesaid conclusions, it is not necessary to advert to the decisions cited at the bar. Suffice it to state that the law laid down in the decisions of the Supreme Court in the case of Jalgaon Municipal Council (2003 AIR SCW 1061) has not been violated in any manner. On the other hand, the Supreme Court has very clearly observed that the power to establish Council or Corporation is neither executive nor administrative in nature but it is

a legislative process. The grounds for judicial review when such process is undertaken are extremely limited. Once we are of the view that parameters laid down in the constitutional provisions and the Municipalities Act as well as Panchayat Act have been duly considered, then the action cannot be impugned on the grounds raised in this petition. Hence, it is not necessary to make a detailed reference to this decision of the Supreme Court or to a Division bench decision in the case of Deep Narayan Chavan & Ors. Vs. State of Maharashtra & Ors., reported in 2003 (4) ALL MR 922. In so far as other decisions relied upon by Ms.Karnik, it is clear that the process of consultation does not mandate hearing to the village panchayat. We cannot read into the provisions something which the provisions themselves do not provide. Moreso, considering the nature of the power, it will not be possible to uphold the submission about opportunity of hearing to the panchayat. The decision relied upon in that behalf of this Court in the case of Ashok Ganapat Jadhav & Anr. Vs. State Election Commission & Ors., reported in 2000 (SUPP) BOM.C.R. 337 is thus distinguishable.

Similarly, we do not find in the contention that the objections from the affected parties have not been invited or considered. Therefore, it is not necessary to advert to the decision in the case of Laxmen s/o.Jagannath Yadav Vs. The State of Maharashtra & Ors. reported in 1990(3) B.C.R. 14.

27. As far as the law laid down in the case of Gram Sudhar Samiti, Mahadulla Vs. Gram Panchayat, Mahadulla and Ors., reported in 2004(4) Mh.L.J. 309, a perusal of the said decision would indicate the peculiar facts where substantial portion of a villege was carved out and annexed to another villege Koradi, causing several hardships to the villagers of that area and the notification issued in that behalf did not set out that consultation with the villege panchayat was undertaken. In para 3 of this decision, this Court has recorded that the notification does not indicate that consultation had taken place. In that decision, no affidavit was filed disputing the contention that there was no consultation with the villege Panchayat. It is in these state of affairs that this court

struck down the notification. This decision is, therefore, distinguishable on facts. In the matter at hand, adequate and sufficient material has been placed on the aspect of consultation. Not only an affidavit has been filed but record pertaining to this exercise was placed before us.

28. In the light of the aforesaid, we are of the view that the petitioners have failed to make out any case for interference by us in exercise of our extra ordinary equitable and discretionary power under Article 226 of the Constitution of India. We are inclined not to interfere also because the State Government has issued notification in 1998. Thereafter, general elections of Palghar Municipal Council were held in 1999 and lastly in 2004. Today the elected body is in existence. Some of the petitioners contested general elections. Palghar municipal council has spend a sum of Rs.23.63 and 55.73 lakhs for development works in the villages. In these state of affairs, it would not be proper to set the clock back. This is one more reason for which we decline to exercise writ jurisdiction.

29. In the result, writ petition fails. Rule is discharged with no order as to costs.

*****